

SENATE BILL NO. 38

INTRODUCED BY D. GRIMES

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MEDICAL SUPPORT REFORM ACT TO COMPLY WITH FEDERAL LAW REGARDING ISSUANCE OF A MEDICAL SUPPORT NOTICE; AND AMENDING SECTIONS 40-5-804, 40-5-806, ~~40-5-807~~, AND 40-5-810, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-5-804, MCA, is amended to read:

"40-5-804. Definitions. For purposes of this part, the following definitions apply:

(1) "Child" means an individual, whether over or under 18 years of age, to whom or on whose behalf a legal duty of support is owed by a parent. The term includes but is not limited to a child enrolled or eligible for enrollment under a health benefit plan or individual insurance policy.

(2) "Child support guidelines" means guidelines adopted under the provisions of 40-5-209.

(3) "COBRA" means the federal Consolidated Omnibus Budget Reconciliation Act of 1985, under which dependent children of employees may continue to receive, for a limited time under specific circumstances, health plan coverage after termination of employment.

(4) "Department" means the department of public health and human services as provided for in 2-15-2201.

(5) "Health benefit plan" or "plan" means a group health benefit plan or combination of plans, other than public assistance programs, that provides medical care or benefits for a child. The term includes but is not limited to a health maintenance organization, self-funded group, state or local government group health plan, church group plan, medical or health service corporation, or similar plan.

(6) "Individual insurance" means health or medical insurance coverage other than a group health benefit plan or public assistance that is or may be provided individually for a child.

(7) "Medical care" means diagnosis, cure, mitigation, treatment, or prevention of disease, illness, or injury, including well baby checkups, periodic examinations, and any other undertaking for the purpose of affecting any structure or function of the body.

(8) "Medical support order" means a judgment, decree, or order, including approval of a settlement agreement issued by a tribunal of competent jurisdiction, that provides for the medical care of a child and that complies with the requirements of this part.

(9) "Obligated parent" means the parent who is required by a medical support order to provide for the medical care of a child. The obligated parent is not necessarily the same as an obligor for child support.

(10) "Parent" means a father or mother and includes a child's guardian or other adult caretaker having lawful charge of the child.

(11) "Payor" or "payor of income" means a person, firm, corporation, association, union, employer, trustee, political subdivision, state agency, or any agent thereof who pays income to a parent on a periodic basis, who has or provides individual insurance or a health benefit plan, and who is subject to the jurisdiction of this state under Rule 4B of the Montana Rules of Civil Procedure or any employer under the Uniform Interstate Family Support Act.

(12) "Plan administrator" means the person or entity, including but not limited to a state or local government or church, that assesses and collects premiums, accepts and processes claims, and pays benefits.

(13) "Primary parent" means the parent with whom the child resides for the most 24-hour periods in a plan year.

(14) "Qualified medical child support order" means an order that meets the requirements of 29 U.S.C. 1169.

(15) "Third-party custodian" means an agency or person other than a parent who:

(a) is authorized by legal process to have physical custody of a child;

(b) has actual physical custody of a child with the written consent of the parent or parents having legal custody of the child; or

(c) has actual physical custody of a child because of the parents' neglect, failure, or inability to provide for the child's support, medical care, and other needs.

(16) "Tribunal" means a court of competent jurisdiction or the department."

Section 2. Section 40-5-806, MCA, is amended to read:

"40-5-806. Contents of medical support order. (1) A medical support order may specify terms for

1 individual insurance coverage and, to the extent of options within an available health benefit plan, the
2 terms for plan coverage, including:

- 3 (a) minimum required policy limits;
- 4 (b) minimum required coverage;
- 5 (c) maximum terms for deductibles or required copayments; and
- 6 (d) other significant terms.

7 (2) If a child is already covered by individual insurance or a health benefit plan, if the child does
8 not have existing coverage but coverage can be obtained under a health benefit plan that is available to
9 the primary parent, or if the child does not have existing coverage and coverage for the child under a plan
10 is available to the other parent, then the medical support order must require participation in that plan
11 unless:

12 (a) the cost of continuing coverage or the cost of the health benefit plan is not reasonable or
13 cost-beneficial; or

14 (b) another plan or individual insurance is available that will better serve the interests of the
15 parties.

16 (3) If health benefit plans are available to both parents at a combined cost that is reasonable or
17 cost-beneficial and with benefits that are complementary or compatible as primary and secondary
18 coverage, the medical support order must require both parents to provide coverage for the child.

19 (4) If, at the time of the medical support order, coverage for the child in a health benefit plan is
20 not available to either parent, the parent other than the primary parent must be required to obtain individual
21 insurance coverage for the child. If the cost of individual insurance is not reasonable or cost-effective, the
22 parent other than the primary parent must be required to obtain individual insurance or a health benefit plan
23 at such time in the future that it becomes available to that parent at reasonable cost. The requirements
24 in this subsection (4) to obtain a plan are not enforceable if:

25 (a) the primary parent has obtained individual insurance or a health benefit plan for the child and
26 both parents have agreed in writing to share the costs of maintaining the coverage; or

27 (b) the other parent persuades the tribunal that the cost of available health benefit plans is not
28 reasonable or cost-beneficial.

29 (5) IF THE DEPARTMENT IS PROVIDING CHILD SUPPORT ENFORCEMENT SERVICES, THE DEPARTMENT SHALL ENSURE
30 THAT A PARENT REQUIRED BY A MEDICAL SUPPORT ORDER TO OBTAIN A HEALTH BENEFIT PLAN OR INDIVIDUAL INSURANCE

FOR A CHILD IS INFORMED OF ANY STATE GROUP HEALTH BENEFIT PLAN, SUCH AS THE STATE CHILDREN'S HEALTH INSURANCE PLAN, FOR WHICH A CHILD MAY BE ELIGIBLE. IF A MEDICAL SUPPORT ORDER REQUIRING ENROLLMENT IS ISSUED BY THE DEPARTMENT OR THE COURT AND A DETERMINATION IS MADE THAT INSURANCE IS NOT AVAILABLE AT A REASONABLE COST, THE TRIBUNAL SHALL NOTIFY THE PRIMARY PARENT OF THE DETERMINATION AND OF ANY STATE GROUP HEALTH BENEFIT PLAN FOR WHICH A CHILD MAY BE ELIGIBLE AND MAY ORDER THE PRIMARY PARENT TO SUBMIT AN APPLICATION TO THE DEPARTMENT FOR ENROLLMENT OF THE CHILD IN A STATE GROUP HEALTH BENEFIT PLAN, SUCH AS THE STATE CHILDREN'S HEALTH INSURANCE PLAN. IF THE DEPARTMENT DETERMINES THAT THE CHILD IS ELIGIBLE, IT SHALL ENROLL THE CHILD IN THE PROGRAM PURSUANT TO STANDARD ENROLLMENT PROCEDURES.

~~(5)~~(6) This section also applies when a child is placed with a third-party custodian, unless a parent has obtained individual insurance or a plan for the child and both parents have agreed in writing to share the costs of maintaining the coverage or a parent persuades the tribunal that the cost of available individual insurance and plans is not reasonable or cost-beneficial. For purposes of this subsection, the primary parent is considered to be the parent with whom the child resided for the most 24-hour periods in the 12 months prior to placement with the third-party custodian.

~~(6)~~(7) The medical support order must also provide that the cost of individual insurance or the health benefit plan, any copayments and deductibles required under the coverage, and all medical expenses for the child that are not covered by individual insurance or the plan must be shared between parents in accordance with the child support guidelines. If the order fails to designate each parent's share, each parent is liable for 50% of the costs and expenses.

~~(7)~~(8) The costs of providing individual insurance or a health benefit plan may not be used as a direct offset to the child support obligation. However, as provided by the child support guidelines, the costs may be considered in making or modifying a child support order.

~~(8) (a) Individual insurance or a health benefit plan is presumed to be available at reasonable cost if:~~

~~—— (i) an amount payable for individual insurance or health benefit plan premiums does not exceed 25% of the obligated parent's total parental child support obligation when calculated under the child support guidelines without credit for the medical support obligation; or~~

~~—— (ii) a health benefit plan is available through an employer or other group organization for which the premium is partially or entirely paid by the employer or other group organization.~~

~~—— (b) The presumption under subsection (8)(a) may be rebutted by clear and convincing evidence;~~

1 and the tribunal has the discretion to:

2 ~~—— (i) order individual insurance or health benefit plan coverage when the amount of the premium may~~
3 ~~be greater than the presumptive amount; or~~

4 ~~—— (ii) not order coverage when the amount of the premium is less than the presumptive amount.~~

5 ~~(8)(9)~~ The department shall adopt rules establishing guidelines to determine whether individual
6 insurance or a health benefit plan is presumed to be available at a reasonable cost and under what
7 conditions the presumption may be rebutted. The rules must apply in any proceeding to establish or
8 enforce a medical support order."

9

10 ~~—— **Section 3.** Section 40-5-807, MCA, is amended to read:~~

11 ~~—— **"40-5-807. Mandatory provisions of medical support order.** (1) Unless the tribunal expressly~~
12 ~~specifies otherwise, a medical support order must include terms directed toward the provisions of~~
13 ~~40-5-806(2) through (8) (7), even though a provision contained in those subsections may not apply to the~~
14 ~~parent's circumstances at the time the order is entered. The terms may be established as alternatives or~~
15 ~~contingencies that provide that if circumstances later change, the health needs of the child will continue~~
16 ~~to be met under one of the subsections without need for modification of the medical support order or other~~
17 ~~action by the tribunal that issued the order or any other tribunal of competent jurisdiction.~~

18 ~~—— (2) If circumstances change and a parent believes that corresponding changes in costs are not~~
19 ~~reasonable or cost-beneficial, the parent may move to petition any appropriate tribunal for relief.~~

20 ~~—— (3) If a health benefit plan is provided through an employer, union, or other group, the medical~~
21 ~~support order must also include provisions necessary to entitle the order to recognition as a qualified~~
22 ~~medical child support order."~~

23

24 **Section 3.** Section 40-5-810, MCA, is amended to read:

25 **"40-5-810. Authorization Notice of intent to enroll -- order to enroll -- authorization to enroll and**
26 **participate in health benefit plan -- rules.** (1) When a parent is required by a medical support order to
27 obtain a health benefit plan for a child, the parent may be served with a notice of intent to enroll the child
28 in any plan available to that parent. The notice may be issued separately or may be combined with any
29 other notice issued under this part.

30 (2) The notice must contain a statement of the:

1 (a) procedures to follow if the parent wishes to contest enrollment of a child in the plan;

2 (b) conditions under which enrollment will occur and that enrollment applies to all current and
3 subsequent plans; and

4 (c) period of time within which the parent may file a request for a hearing to contest the
5 enrollment.

6 (3) For notices issued by the department under this section, hearings must be contested cases
7 under Title 2, chapter 4.

8 (4) The notice must be served upon the parent by certified mail or personally, including by
9 acknowledgment of service.

10 (5) An order requiring enrollment of a child in a plan may be issued:

11 (a) at any time after the parent's time for filing a request for a hearing on the notice of intent to
12 enroll has lapsed;

13 (b) as a result of a hearing that authorizes an order to enroll;

14 (c) upon identifying a plan that is available to the parent; or

15 (d) upon determining that the cost of the plan available to the parent is reasonable.

16 (6) An order requiring enrollment in a plan may be served on a plan administrator, an employer,
17 or another individual or entity by certified mail or personally, including by acknowledgment of service.

18 ~~(4)(7)~~ A plan administrator shall enroll a child when given a medical support order or an order to
19 enroll the child issued under this section, even if the obligated parent fails to execute documents required
20 by the plan. The parents, the department, and a third-party custodian may release to a plan provider,
21 employer, union, or other group any information necessary to obtain or enforce medical support or to
22 facilitate the preparation, submission, processing, verification, or payment of claims.

23 ~~(2)(8)~~ The signature of either parent, of an authorized representative of the department, or of a
24 third-party custodian or the receipt of an order to enroll the child issued under this section authorizes the
25 plan to receive and process claims and exercise any available options for the continuation or extension.

26 (9) (a) The order to enroll the child must instruct the employer to:

27 (i) transfer the notice and order to the plan administrator within 20 days of service or by another
28 date specified in the order;

29 (ii) notify the entity issuing the order of any lapse in insurance coverage or employment;

30 (iii) notify the entity issuing the order when the child is enrolled;

1 (iv) withhold any premiums from the parent's income and transfer the premiums to the plan; and

2 (v) not disenroll the child except in situations specified in the order.

3 (b) The order to enroll the child must instruct the plan administrator to, within 40 days of receipt
4 of the order:

5 (i) take steps to cover the child, to notify the employer, and to provide verification of enrollment
6 and a plan description to the department, parents, and any third-party custodian of the child; or

7 (ii) provide information to the entity issuing the order concerning why coverage is not available.

8 (10) The department may adopt rules in conformity with federal law establishing the priority of
9 withholdings for financial support and medical support. Regardless of the priority of withholdings, the
10 maximum amount withheld from the parent's wages or salary, including fees, may not exceed the
11 maximum amount permitted under the federal Consumer Credit Protection Act, 15 U.S.C. 1673.

12 (11) An order to enroll may be modified or replaced at any time to add a child to or remove a child
13 from a plan, consistent with the parent's medical support obligation.

14 (12) The department may terminate an order to enroll issued by the department when the
15 department is no longer authorized to enforce the parent's medical support obligation, when the parent's
16 medical support obligation is terminated, or when the department determines that the cost of the plan to
17 the parent is not reasonable."

18 - END -